

9-17-2012

## Report to the Washington State Supreme Court by the Joint Select Committee on Article IX Litigation

Follow this and additional works at: <https://digitalcommons.law.uw.edu/wasupreme>

---

### Recommended Citation

*Report to the Washington State Supreme Court by the Joint Select Committee on Article IX Litigation*  
(2012), <https://digitalcommons.law.uw.edu/wasupreme/102>

This Report is brought to you for free and open access by the School Finance Litigation: McCleary v. State of Washington at UW Law Digital Commons. It has been accepted for inclusion in Washington Supreme Court Documents by an authorized administrator of UW Law Digital Commons. For more information, please contact [cnyberg@uw.edu](mailto:cnyberg@uw.edu).



## Washington State Legislature

September 17, 2012

Washington State Supreme Court  
Temple of Justice  
Olympia, WA 98504

RECEIVED  
SUPREME COURT  
STATE OF WASHINGTON  
2012 SEP 17 P 2:03  
BY RETAIL D. CARRER

Dear Chief Justice Madsen and Honorable Members of the Washington State Supreme Court:

Per this Court's order of July 18, 2012 in *McCleary v. State*, No. 84362-7, please find attached the first report of the legislative Joint Select Committee on Article IX Litigation. This report was adopted unanimously by the Committee at its meeting on September 12, 2012. The Committee looks forward to continued dialogue and cooperation with this Court.

Respectfully,

Senator David Frocht, Co-Chair  
46<sup>th</sup> Legislative District

Representative Gary Alexander, Co-Chair  
20<sup>th</sup> Legislative District

Representative Susan Fagan, 9<sup>th</sup> Legislative District  
Senator Joe Fain, 47<sup>th</sup> Legislative District  
Senator Steve Litzow, 41<sup>st</sup> Legislative District  
Representative Jamie Pedersen, 43<sup>rd</sup> Legislative District  
Senator Christine Rolfes, 23<sup>rd</sup> Legislative District  
Representative Pat Sullivan, 47<sup>th</sup> Legislative District

Enclosures (2)





Rob McKenna  
**ATTORNEY GENERAL OF WASHINGTON**

Education Division

PO Box 40100 • Olympia, WA 98504-0100 • (360) 753-6200

September 17, 2012

The Supreme Court of Washington  
Ronald R. Carpenter, Court Clerk  
Temple of Justice  
PO Box 40929  
Olympia, WA 98504-0100

RECEIVED  
SUPREME COURT  
STATE OF WASHINGTON  
2012 SEP 17 P 2:08  
BY RONALD R. CARPENTER

**RE: Supreme Court No. 84362-7 – *Mathew & Stephanie McCleary, et al. v. State of Washington***  
**King County Superior Court No. 07-2-02323-2**

Dear Court Clerk:

Pursuant to the Court's Order, dated July 18, 2012, we are transmitting for filing, the first Report by the Legislature's Joint Select Committee on Article IX Litigation. A copy has been served on opposing counsel, Thomas Ahearn of Foster Pepper PLLC, today, September 17, 2012, at the address listed below.

An electronic copy of the Report is also being publicly posted on the Legislature's website at the following address: <http://www.leg.wa.gov/jointcommittees/AIXLJSC/Pages/default.aspx>.

Sincerely,

David A. Stolier  
Sr. Assistant Attorney General  
Attorney for the State of Washington

DAS:tb

cc: Thomas F. Ahearn, Christopher Emch  
Foster Pepper PLLC, 1111 3<sup>rd</sup> Avenue, Ste 3400, Seattle, WA 98101





# **Report to the Washington State Supreme Court by the Joint Select Committee on Article IX Litigation**

## **Executive Summary**

The Washington State Supreme Court issued its landmark ruling in *McCleary v. State* on January 5, 2012. In this ruling, this Court held that the state had failed to meet its Article IX duty to fully fund a program of basic education. Although this Court stated that recently enacted reforms to basic education were "promising" and would, if fully funded, satisfy the state's Article IX duty, a majority of the Court voted to retain jurisdiction over the case in order to monitor legislative compliance with funding implementation. To respond to the request for an interbranch dialogue, the Legislature enacted HCR 4410, which established a Joint Select Committee ("Committee") on Article IX litigation. The Committee consists of eight legislators--four members of the state Senate and four members of the state House of Representatives. On July 18, 2012, the Court issued its order on the form of continued jurisdiction, in which it requested an annual report from the Committee regarding implementation of Article IX reforms. This order specified that the first report be provided within 60 days of this Court's order.

As of November 2011, reductions to the state's revenue forecast had eliminated the state's reserves of \$741 million and left a projected deficit of \$1.4 billion for the 2012 Legislature to balance before the close of the 2011-13 fiscal biennium. This Court issued the *McCleary* ruling shortly before the start of the 2012 legislative session. Earlier in the 2011-13 budget cycle, the Legislature had funded initial steps in the implementation of basic education reform legislation. Given the timing of the ruling, the critical need for an effective implementation plan, the need to close this deficit in a supplemental budget year, and uncertainty over the form of judicial supervision, the Legislature did not take further steps to implement the reforms established in ESHB 2261 and SHB 2776 beyond those already enacted in 2011. The 2012 Legislature rejected proposals to balance the budget by making reductions to the program of basic education,<sup>1</sup> and the supplemental budget enacted in 2012 did not make reductions to funding for K-12 education.<sup>2</sup>

Because this is the first of several anticipated reports, and because the Legislature did not make changes to basic education funding during the 2012 legislative session, this report provides a baseline description of the K-12 budget and information on recent legislative activities in order to provide context for future reports.

---

<sup>1</sup> House Bill 2127 (2011) (as introduced at request of Governor Gregoire) (proposed 2012 supplemental appropriations assume elimination of four days from the 180-day school year).

<sup>2</sup> See Legislative Budget Notes, 2011-13 Biennium--2012 Supplemental 194-95, attached as Appendix A and available online at <http://leap.leg.wa.gov/leap/budget/lbns/2012toc.htm>.

This report discusses:

- The Legislature's response to the ruling, including formation of the Joint Select Committee on Article IX Litigation;
- Recently enacted basic education reforms;
- The state operating budget context;
- Recent state budget actions; and
- Ongoing efforts for reform and funding of basic education.

## **The McCleary Ruling**

On January 5, 2012, shortly before the beginning of the 2012 regular session of the Legislature, this Court issued its ruling in *McCleary v. State*.<sup>3</sup> The ruling represented a milestone in the five-year lawsuit. Even before this Court issued its ruling, the Legislature had begun a series of reforms to the program of basic education and to the formulas that fund it, as described *infra* at 12.

The *McCleary* Court determined that the Legislature had satisfied its Article IX duty to define and give substance to a program of basic education. Specifically, by adopting the learning goals of ESHB 1209 (1993)<sup>4</sup> and developing the Essential Academic Learning Requirements (EALRs) pursuant to those goals, the Legislature has established the substance of the educational program required by Article IX.<sup>5</sup> Further, the Legislature has given substantive content to the program it deems necessary to provide that education.<sup>6</sup> It did so by establishing general apportionment under the Basic Education Act, special education, learning assistance program, transitional bilingual, some pupil transportation, and the institutional education program. This Court noted that ESHB 2261<sup>7</sup> expanded the program of basic education to include, for example, all-day kindergarten and the highly capable program.

Even though the legislature had satisfied this aspect of the Article IX duty, this Court found in *McCleary* that the state had failed to satisfy the second aspect of the duty--the obligation to make "ample provision." This Court concluded that the pre-ESHB 2261 basic education funding formulas no longer corresponded to the level of resources needed to meet performance-based standards.<sup>8</sup> This Court also found that evidence introduced at trial demonstrated that the state had not fully funded the costs of its own definition. Specifically, this Court upheld the trial court's determination that the state had underfunded Non-Employee Related Costs (NERCs)<sup>9</sup>, student transportation, and staff salaries and benefits.<sup>10</sup>

Having found that the state had failed to make ample provision for its Article IX duty, this Court then turned to the "elusive" question of the appropriate remedy. This Court deemed this question difficult for two reasons.

First, the Legislature had made substantial changes to the law during the litigation process. On the one hand, the Legislature had enacted ESHB 2261 and SHB 2776,<sup>11</sup> and this Court, unlike the trial court, had the "benefit of seeing the wheels turn under ESHB 2261."<sup>12</sup> On the other hand, this Court concluded that the Legislature had failed to provide full funding for ESHB

---

<sup>3</sup> 173 Wn.2d 477 (2012).

<sup>4</sup> Chapter 336, Laws of 1993 (Engrossed Substitute House Bill No. 1209)

<sup>5</sup> 173 Wn.2d at 523-24.

<sup>6</sup> 173 Wn.2d at 526.

<sup>7</sup> Chapter 548, Laws of 2009 (Engrossed Substitute House Bill No. 2261).

<sup>8</sup> 173 Wn.2d at 530.

<sup>9</sup> Under ESHB 2261, these costs are now termed Materials, Supplies, and Operating Costs (MSOCs).

<sup>10</sup> 173 Wn.2d at 532-36.

<sup>11</sup> Chapter 236, Laws of 2010.

<sup>12</sup> 173 Wn.2d at 543.



2261."<sup>13</sup> (ESHB 2261 and SHB 2776 direct that the enhancements to the program of basic education be phased in over specified periods, with implementation priority based on poverty level for Full-Day Kindergarten and K-3 class size reduction.<sup>14</sup>)

The second challenge in issuing a remedy arises from the "delicate balancing of powers and responsibilities among coordinate branches of government."<sup>15</sup> In the earlier landmark school funding case, the *Seattle School District* Court had expressly rejected the trial court's remedy of retained jurisdiction. "Legislators, as well as judges, are sworn to support the constitution of the State of Washington and we see no reason to assume that legislators will fail to act in good faith."<sup>16</sup> The *Seattle School District* Court reasoned that retained jurisdiction "is inconsistent with the assumption that the Legislature will comply with the judgment and its constitutional duties."<sup>17</sup> Although the power to establish and reform the program of basic education, as well as the power of appropriation to fund it, is constitutionally vested in the Legislature, this Court concluded in *McCleary* that Article IX, section 1, is a mandate not to a single branch of government but to the entire state. For that reason, this Court could not "stand on the sidelines" and wait for the state to fulfill its obligations.

This Court rejected the trial court's remedy, however. The trial court had ordered the Legislature to undertake a study of the actual cost of basic education. This court concluded that a directive to conduct another cost study was unnecessary, given that the prototypical school formula contained in ESHB 2261 was the product of a type of cost study considered by the Basic Education Finance Task Force.<sup>18</sup> This Court further rejected the plaintiffs' demand for an order mandating absolute compliance within one year.<sup>19</sup> Instead, a majority of this Court determined that it would retain jurisdiction over the case to "help ensure progress in the State's plan to fully implement education reforms by 2018."<sup>20</sup> (Chief Justice Madsen and Justice James M. Johnson dissented on this point, reasoning that adopting standards for defining and funding basic education is a legislative function, and that retention of jurisdiction disturbed the comity between the branches without providing effective guidance to the Legislature.<sup>21</sup>)

---

<sup>13</sup> 173 Wn.2d at 540.

<sup>14</sup> Chapter 236, Laws of 2010.

<sup>15</sup> 173 Wn.2d at 540.

<sup>16</sup> *Seattle School District No. 1 v. State*, 90 Wn.2d 476, 538, 585 P.2d 71 (1978).

<sup>17</sup> *Id.*

<sup>18</sup> 173 Wn.2d at 542.

<sup>19</sup> 173 Wn.2d at 545.

<sup>20</sup> 173 Wn.2d at 547.

<sup>21</sup> 173 Wn.2d at 550 (Madsen, J., dissenting in part).

## **The Joint Select Committee on Article IX Litigation**

This Court's invitation to a formal interbranch dialogue was unprecedented in this state. To respond to this Court's request, shortly after the *McCleary* ruling a bipartisan coalition of legislative leaders introduced House Concurrent Resolution 4410, which established the Joint Select Committee on Article IX Litigation ("Committee"). Soon thereafter the measure was approved by both bodies, passing the House on February 15 and the Senate on February 27.

HCR 4410 explained the Legislature's institutional concerns over the *McCleary* ruling, noting the portion of the ruling that gives the Legislature the authority to select the means of discharging the state's Article IX duty. The Resolution further noted the requirement of the judicial branch to defer to the Legislature's uniquely constituted fact-finding and opinion-gathering procedures. Finally, it expressed concerns regarding potentially intrusive oversight by one co-equal branch over another.

At the same time, HCR 4410 recognized that although the state Constitution enumerates many responsibilities of state government, it declares only the Article IX duty to be paramount. For this reason, the Legislature acknowledged the unique circumstances that led to this Court's decision, so the Legislature declared its intent to establish a structure and process for the interbranch dialogue requested by this Court.

The purposes of the Committee are threefold:

- To provide a point of contact for the Legislature to communicate with this Court, as indicated by the request for a dialogue in this Court's decision to retain jurisdiction;
- To assist and advise the lawyers who represent the State and the Legislature before the judicial branch in the ongoing *McCleary* proceedings;
- To inform the legislators and the institutions of this Court's communications with the legislative branch.

The Committee consists of eight legislators, two from each of the two caucuses in each body.

### **Representatives**

Hon. Gary Alexander, 20<sup>th</sup> Legislative District  
Hon. Susan Fagan, 9<sup>th</sup> Legislative District  
Hon. Jamie Pedersen, 43<sup>rd</sup> Legislative District  
Hon. Pat Sullivan, 47<sup>th</sup> Legislative District

### **Senators**

Hon. Joe Fain, 47<sup>th</sup> Legislative District  
Hon. David Frockt, 46<sup>th</sup> Legislative District  
Hon. Steve Litzow, 41<sup>st</sup> Legislative District  
Hon. Christine Rolfes, 23<sup>rd</sup> Legislative District

## **Order Regarding Retention of Jurisdiction**

This Court requested additional briefing from the parties regarding the method under which the Court would retain jurisdiction over the case. On behalf of the Legislature, the Attorney General requested that this Court retain jurisdiction over the case pending updates from this Committee, as opposed to referring the case to a trial court or special master for fact-finding.

The July 18 Order issued by this Court directed the 4410 committee to report annually following the enactment of the budget. Specifically, the order directs the 4410 Committee to provide a report to the court within 60 days after the biennial or supplemental budget is signed by the Governor, and at such other times as this Court may require. After the filing of the initial report, the subsequent reports must summarize legislative actions taken since the filing of the previous report.

This Court directed the State to file a copy of the report with the Court and serve it on plaintiffs' counsel, and it authorized plaintiffs' counsel to file and serve written comments on the adequacy of implementation of reforms and progress toward full compliance with Article IX, section 1.

Although this Court acknowledged that it is not realistic to measure the steps taken in each legislative session against full constitutional compliance, this Court required the State to demonstrate "steady progress according to the schedule anticipated by the enactment of the program of reforms in ESHB 2261."



## **The K-12 System in Washington**

### **State and Local Implementation of the Paramount Duty**

Article IX, section 1 of the state constitution declares the "paramount duty" to "make ample provision for education of all children residing within its borders," and Article IX, section 2 directs the Legislature to "provide for a general and uniform system of public schools." Under *McCleary* and *Seattle School District*, the duty to fund this public education system is imposed not only on a single branch of government, but on the state as a whole.<sup>22</sup> In the 2011-13 fiscal biennium, the Legislature appropriated a total of \$13.6 billion for K-12 education. In the 2011-12 school year, these appropriations funded a public education for nearly one million full-time equivalent students at 2,281 public schools in 295 school districts across the state. K-12 funding is the single largest expenditure in the state's operating budget, representing 43.5 percent of the state's Near General Fund-State<sup>23</sup> operating appropriations.<sup>24</sup>

At the same time, Washington is generally a "local control" state. Under the principle of local control, the state itself does not deliver the program of K-12 education that it funds. Instead, the state has made a policy decision in favor of local implementation of the state's K-12 education program. This means that the state's 295 local school districts are generally responsible for delivering the actual instructional programs for the state's elementary and secondary school-age population even though the state is responsible for funding the basic programs. The principle of local control means that many K-12 policy and funding decisions are made at the local level. Each district is governed by a locally elected school board whose members serve staggered four-year terms. Each school board hires a superintendent who oversees the day-to-day operation of the school district. These directors and superintendents oversee expenditure of funding that the state allocates to school districts for the basic education program and other education programs, and they generally retain discretion over deployment of these state allocations. The state's K-12 funding laws declare that state basic education funding is "for allocation purposes only."<sup>25</sup> Subject to specified requirements, the state's funding laws do not require school districts to implement particular instructional programs or services.<sup>26</sup> Instead, under local control, those choices are made by the local school board.

Ultimately, notwithstanding this important policy of local control, the paramount obligation to make ample provision for basic education is placed on the state.<sup>27</sup> The Legislature "is only one

---

<sup>22</sup> *McCleary*, 173 Wn.2d at 541; *Seattle School District*, 90 Wn.2d at 511-12 (duty imposed on entire body politic).

<sup>23</sup> "Near General Fund--State" or "NGF-S" is term used to describe collectively the State General Fund (RCW 43.79.010), the Education Legacy Trust Account (RCW 83.100.230), and the Pension Funding Stabilization Account (RCW 41.45.230). The term "NGF-S + Opp Pathways" includes the above accounts as well as the Opportunity Pathways Account (RCW 28B.76.526), which receives lottery revenues and which is appropriated for higher education financial aid and early learning.

<sup>24</sup> NGF-S + Opp Pathways.

<sup>25</sup> RCW 28A.150.260(2).

<sup>26</sup> *Id.*

<sup>27</sup> *Seattle School District I*, 90 Wn.2d at 512.



segment of that intricate governmental body politic,"<sup>28</sup> but it is the branch charged with setting policy, levying taxes, and making appropriations. As this Court acknowledged in *McCleary*, the Legislature enjoys broad discretion in selecting the means of discharging its Article IX duty,<sup>29</sup> and this discretion stems from the Legislature's constitutional role and "uniquely constituted fact-finding and opinion gathering processes."<sup>30</sup>

Every legislator is concerned with K-12 policy and funding and represents constituents who share those concerns--each one of Washington's 147 legislators has at least one school district in his or her legislative district. Legislators are best situated to receive ground-level feedback on legislative policy and funding decisions. As representatives of the communities that elected them, legislators hear from parents, students, teachers, school staff, school administrators, school board members, community leaders, business leaders, and taxpayers. Throughout the legislative session, and throughout the legislative interim, through official studies and hearings and through informal constituent meetings, legislators are constantly engaged in the fact-gathering that informs policy-setting. This ability to gather opinions from a variety of perspectives is unique to the legislative branch and is essential to the law-making process. More specifically, as described *infra* at page 32, the Legislature has established the Joint Task Force on Education Funding to develop and recommend a permanent and reliable funding mechanism for implementing the basic education reforms of ESHB 2261 and SHB 2776 by 2018.<sup>31</sup> As the Legislature moves forward on addressing the *McCleary* ruling and the basic education reforms of ESHB 2261 and SHB 2776, the Legislature will use its fact-finding and opinion gathering powers in implementing its ongoing duty to review and revise the program of basic education.

### **The Statutory Definition of Basic Education**

After Judge Doran's landmark ruling in *Seattle School District I*, the 1977 Legislature enacted the Basic Education Act (BEA).<sup>32</sup> The Legislature intended the BEA to implement the state's Article IX responsibility, to define the minimum education program to be made available to all students in public schools, and to shift the funding responsibility from local excess levies to the state. As this Court later explained when it upheld Judge Doran's ruling, it is the Legislature's duty to give content to the term "education" and to the program the Legislature deems necessary to provide the education within the broad guidelines given by the court.<sup>33</sup> This Court emphasized that its ruling did not obligate the state to provide "'total education' in the sense of *all* knowledge or the offering of *all* programs, subjects, or services[.]"<sup>34</sup> Rather, *Seattle School District* defined the Legislature's obligation as the duty to provide a "basic" education as distinct from a "total" education. Further, *Seattle School District* specifically approved the use of local excess levies to fund programs and activities that the state is not required to fund under its basic

---

<sup>28</sup> *Id.*

<sup>29</sup> *McCleary*, 173 Wn.2d at 517, 526-27.

<sup>30</sup> *McCleary*, 173 Wn.2d at 517-18 (citations omitted).

<sup>31</sup> Task Force agendas and meeting materials are attached as Appendix B and available at the Task Force's website, <http://www.leg.wa.gov/JointCommittees/EFTF/Pages/Meetings.aspx>.

<sup>32</sup> Chapter 359, Laws of 1977, 1st ex sess.

<sup>33</sup> *Seattle School District*, 90 Wn.2d at 518-19.

<sup>34</sup> *Id.* (emphasis in original).

education obligation.<sup>35</sup> Given this distinction, the Legislature's appropriations for K-12 programs have included funding for programs and services both within and outside the statutory definition of basic education.

In the 1983 ruling known as *Seattle School District II*, Judge Doran determined that the Legislature's Article IX obligation included statutory programs beyond general apportionment programs and formulas that the Legislature had specified in the BEA.<sup>36</sup> Under this ruling, categorical programs that provide students with access to the regular program, such as special education, remedial education, bilingual education, and some student transportation, are also part of the state's constitutional duties.

Due to this hybrid legal development, the state's basic education duty thus consisted of a combination of statutes supplemented by court rulings. In 2009, the Legislature enacted ESHB 2261, a substantial reform of basic education funding. By enacting ESHB 2261 (described in more detail at 12, *infra*), the Legislature consolidated these statutory and judicial definitions into a single statutory enactment.<sup>37</sup> ESHB 2261 and SHB 2776 declared that these statutes constituted the Legislature's definition of the basic education program.<sup>38</sup> In *McCleary*, this Court deferred to the Legislature's statutory reforms and agreed that—if fully funded—the reform legislation would constitute compliance with Article IX.<sup>39</sup>

---

<sup>35</sup> *Seattle School District*, 90 Wn.2d at 526.

<sup>36</sup> Findings and Conclusions at 66-69, Declaratory Judgment at 1-2, *Seattle School District v. State*, (Thurston County Super. Ct. 1983) (No. 81-2-1713-1) ("*Seattle School District II*"). See *McCleary*, 173 Wn.2d at 527 & n.23; *Brown v. State*, 155 Wn.2d 254, 262 n.2 (2005).

<sup>37</sup> Laws of 2009, Chapter 548.

<sup>38</sup> Laws of 2009, Chapter 548, secs 1-2; Laws of 2010, Chapter 236, sec. 1.

<sup>39</sup> *McCleary*, 173 Wn.2d at 484, 543-46.



The following charts illustrate the educational services included in the basic education definition that is implemented in ESHB 2261's prototypical school formula.<sup>40</sup> In addition to the instructional program of basic education funded under the new prototypical school formula, ESHB 2261 also declares that the state's program of basic education includes the statutory programs of education for students in residential schools and juvenile detention facilities, minors incarcerated in adult correctional facilities, and transportation to and from school for eligible students.<sup>41</sup>

Elementary School		Middle School		High School	
Prototype Enrollment: 400 Staff are expressed as FTE/school		Prototype Enrollment: 432 Staff are expressed as FTE/school		Prototype Enrollment: 600 Staff are expressed as FTE/school	
Class Size in grades K-3:	25.2	Class Size in grades 7-8:	28.5	Class Size in grades 9-12*:	28.7
Class Size in grades 4-6:	27.0	Librarians:	0.52	Librarians:	0.52
Librarians:	0.66	Guidance Counselors:	1.12	Guidance Counselors:	1.91
Guidance Counselors:	0.49	Health/Social Services: (Nurses/Social Workers)	0.07	Health/Social Services: (Nurses/Social Workers)	0.12
Health/Social Services: (Nurses/Social Workers)	0.14	Administrative Staff: (Principals/Vice Principals)	1.35	Administrative Staff: (Principals/Vice Principals)	1.88
Administrative Staff: (Principals/Vice Principals)	1.25	Non-Instructional Classified Staff : (Office Aids, Custodians, Security Guards, etc)	4.36	Non-Instruct. Classified : (Office Aids, Custodians, Security Guards, etc)	6.38
Non-Instructional Classified Staff : (Office Aids, Custodians, Security Guards, etc)	3.75	Instructional Aides (Non-certified Classroom Aides)	0.70	Instructional Aides (Non-certified Classroom Aides)	0.65
Instructional Aides (Non-certified Classroom Aides)	0.93			*Class size in high school vocational programs: 26.6 *Class size in Skills Center programs: 22.8	

<sup>40</sup> RCW 28A.150.220. As described *supra*, at 7, the funding formulas are for allocation purposes and generally do not require individual districts to implement specific staffing levels. The formulas in the charts express baseline values and not incremental implementation of K-3 class size and all-day K under SHB 2776.

<sup>41</sup> RCW 28A.150.200.



### More Instructional Time for Students Needing Additional Help

\*Expressed as Additional Hours of  
Supplemental Instruction Per Week

Learning Assistance  
Program\* 1.52

Transitional Bilingual  
Program\* 4.78

Highly Capable  
Program\* 2.16

Special Education  
Funding Enhancement 93.09%

### Supplies, Materials, & Other Operating Costs (MSOC)

Non-salary related cost items

Technology \$57.42

Utilities & Insurance \$156.03

Curriculum & Textbooks \$61.65

Other Supplies & Library  
Materials \$130.89

Professional  
Development \$9.53

Facilities Maintenance \$77.30

Security & Central Office \$53.55

Total: \$546.37  
/student\*

\*vocational & skill center students  
receive more

### Central Office & Other Support

#### Central Office Allocation

Expressed as Percent of School  
Staff Unit Allocations 5.3%

District-wide Support --  
Central office staff working primarily  
in school buildings:

Technology support staff 0.63

Facilities, Maintenance  
& Grounds 0.34

Warehouse, Laborers, &  
Mechanics 1.80

Total: 2.77  
per 1000  
students

## **Recently Enacted Basic Education Reforms**

During the 2009 and 2010 legislative sessions, the Sixty-First Legislature enacted major reforms to the program of Basic Education and to the funding formulas that finance it. In its ruling, this Court declared that these promising reforms, if fully funded, would constitute compliance with the state's Article IX duty. Notwithstanding the state's present economic circumstances,<sup>42</sup> the state has begun the process of implementing these reforms.

This portion of the report provides additional detail on these laws in order to establish the background for future legislative compliance with this Court's July 18 order.

### **Engrossed Substitute House Bill 2261 (2009).<sup>43</sup>**

ESHB 2261 resulted from the work of Washington Learns (2005-06) and the Basic Education Funding Task Force. In it, the Legislature directly affirmed that its Article IX obligation included a variety of programs and services beyond general apportionment allocations. Over the years, court decisions had ruled that specific statutory programs were part of the state's Article IX duty.<sup>44</sup> ESHB 2261 affirmatively codified and declared a constitutional obligation to fund these programs.

ESHB 2261 contained a declaration of the Legislature's intent to continue to review, evaluate, and revise the definition and funding of Basic Education in order to continue to fulfill the state's obligation under Article IX of the State Constitution. The Legislature found that for practical and educational reasons, major changes in the program and funding could not occur instantaneously. Instead, the Legislature declared its intent to develop a realistic implementation strategy and establish a formal structure for monitoring the implementation of an evolving Program of Basic Education and the financing necessary to support it. The Legislature intends that the redefined Program of Basic Education and funding be fully implemented by 2018. It is the Legislature's intent that the policies and formulas under the bill will constitute the Legislature's definition of basic education once fully implemented.

#### ***Program of Basic Education.***

In ESHB 2261, the Legislature affirmatively codified the state's definition of basic education. As described *supra*, at 9, before ESHB 2261, the state's legal obligation consisted of a combination of statutory enactments and judicial interpretations of those enactments.<sup>45</sup> Effective September 1, 2011, the Program of Basic Education that complies with Article IX of the State Constitution is defined as:

- the Instructional Program of Basic Education provided by public schools;
- the program for students in residential schools and juvenile detention facilities;

---

<sup>42</sup> See *infra* at 22-31 (discussing budget and revenue context).

<sup>43</sup> Chapter 548, Laws of 2009.

<sup>44</sup> *Seattle School District II*, *supra* note 36.

<sup>45</sup> *Seattle School District II*, *supra* note 36.



- the program for individuals under age 18 who are in adult correctional facilities; and
- transportation and transportation services to and from school for eligible students.<sup>46</sup>

The Program of Basic Education also includes the opportunity for students to develop the knowledge and skills necessary to meet graduation requirements, intended to allow them the opportunity to graduate with a meaningful high school diploma that prepares them for postsecondary education, gainful employment, and citizenship.

*Instructional Program.* Also effective September 1, 2011, the minimum Instructional Program of Basic Education offered by school districts is as follows:

- 180 school days per school year, with 180 half-days for kindergarten, which is increased to 180 full days beginning with schools with the highest percentages of low-income students;
- a district-wide average of 1,000 instructional hours across all grade levels, to be increased according to an implementation schedule adopted by the Legislature to 1,080 hours in grades 7 through 12 and 1,000 instructional hours in grades 1 through 6; and
- 450 instructional hours in kindergarten, to be increased to 1,000 hours as full-day kindergarten is phased-in.

The Instructional Program also includes the opportunity for students to complete 24 credits for high school graduation, subject to a phase-in of course and credit requirements by the Legislature; supplemental instruction through the Learning Assistance Program (LAP), the Transitional Bilingual Instructional Program (TBIP), instruction in the Essential Academic Learning Requirements, and the Highly Capable Program; and Special Education for students with disabilities.

*Funding Allocation for Instructional Program.* Beginning September 1, 2011, a new distribution formula is created for the allocation of state funds to school districts to support the Instructional Program of Basic Education, to be implemented to the extent the technical details of the formula have been adopted by the Legislature. The formula is for allocation purposes only. Nothing requires a particular teacher-to-student ratio or requires use of allocated funds to pay for particular types or classifications of staff.

The formula is based on minimum staffing and non-staff costs to support prototypical schools. Prototypes illustrate the level of resources needed to operate a school of a particular size with particular types and grade levels of students using commonly understood terms and inputs. Allocations to school districts will be adjusted from the prototypes based on actual full-time equivalent (FTE) student enrollment in each grade in each school in the district, adjusted for small schools and to reflect other factors in the state appropriations act.

The school prototypes are defined as:

- High school: 600 FTE students in grades 9 through 12;
- Middle school: 432 FTE students in grades 7 and 8; and

<sup>46</sup> RCW 28A.150.200 (listing statutorily defined programs).

- Elementary school: 400 FTE students in grades kindergarten through 6.

For each school prototype, the core allocation consists of four parts:

1. *Class Size*: an allocation based on the number of FTE teachers calculated using the following factors: the minimum instructional hours required for the grade span, one teacher planning period per day, and average class sizes of various types (later specified in detail by SHB 2776);
2. *Other Building Staff*: an allocation for principals, teacher-librarians, student health services, guidance counselors, professional development coaches, teaching assistance, office and technology support, custodians, and classified staff providing student/staff safety;
3. *Maintenance, Supplies, and Operating Costs (MSOC)*: a per-FTE student allocation for student technology, utilities, curriculum, instructional professional development, other building costs, and central office administration. The allocation will be enhanced for student enrollment in certain career and technical education and science courses; and
4. *Central Office Administrative Staff*: a staffing allocation calculated as a percentage of the allocations for teachers and other building staff for all schools in the district, with the percentage specified in the state appropriations act.

Allocations for middle and high schools that are based on the number of low-income students will be adjusted to reflect underreporting of eligibility for Free and Reduced Price Lunch (FRL) among these students.

*Categorical Programs.* Within the distribution formula for the Instructional Program of Basic Education are enhancements in addition to the core allocation for the following categorical programs:

1. Learning Assistance Program: an enhancement based on poverty, as measured by the percentage of Free and Reduced-price Lunch students in each school, to provide an extended school day and school year;
2. Transitional Bilingual Instruction Program: an enhancement for students eligible for and enrolled in the TBIP based on the percent of the school day a student is assumed to receive supplemental instruction;
3. Highly Capable Program: an enhancement based on 2.314 percent of each district's FTE student enrollment to provide an extended school day and school year; and
4. Special Education: an enhancement made on an excess cost basis that is a specified percentage (1.15 percent for students aged birth to five who are not in kindergarten and 0.9309 percent for students in grades kindergarten through 12) of the core allocation for basic class size, other building staff, and MSOC. The excess cost allocation is based on district-wide enrollment not to exceed 12.7 percent of total FTE enrollment in grades kindergarten through 12. A safety net process provides a means for extra funding for districts that experience extraordinary special education costs.

*Highly Capable.* ESHB 2261 added the Highly Capable Program to the definition of basic education. Previously, under *Seattle School District II*, Judge Doran ruled that the program was



not part of the state's Article IX obligation.<sup>47</sup> Under ESHB 2261, for highly capable students access to accelerated learning and enhanced instruction is access to a Basic Education. The legislation does not establish a single method to identify highly capable students; instead, the new funding formula allocates funding based on 2.314 percent of each school district's population. Districts must identify through multiple, objective criteria those students eligible to receive accelerated learning and enhanced instruction through the Highly Capable Program of the district. Access to the Highly Capable Program does not constitute an individual entitlement for any particular student.

*Pupil Transportation.* A new pupil transportation funding formula is authorized using a regression analysis to allocate funds to school districts. The funding basis of a radius mile is removed. Ridership counts are increased to three times per year, and extended academic day transportation is included within allowable trips. Implementation of the formula is phased in beginning with the 2013-14 school year, and a method of allocating any increased funding during the phase in period is specified.

Efficiency reporting also begins in the 2013-14 school year. Individual reviews will be conducted on districts with 90 percent or less efficiency. A report summarizing the efficiency reviews and resulting changes made by districts must be submitted to the Legislature by December 1 of each year.

#### ***Other Programs.***

In addition to changes to the program of basic education, ESHB 2261 made changes to other programs. It directed the Professional Educators Standards Board to adopt new standards for effective teaching, adopt a definition of "master teacher," develop a proposal for a uniform classroom-based means for teacher evaluation, and make other recommendations regarding teacher certification.

ESHB 2261 also established an Education Data Improvement system with the capacity to track comprehensive education and student information, as well as financial information regarding reporting of costs and revenues.

In enacting ESHB 2261, the Legislature also determined that comprehensive finance reform must be accompanied by a new mechanism for defining relationships and expectations for the state, school districts, and schools. To that end, the Legislature directed the State Board of Education to develop a proactive, collaborative system in which the state and school districts share accountability for supporting continuous improvement and achieving state standards

#### ***Review and revision.***

*Quality Education Council.* ESHB 2261 created the Quality Education Council (QEC) to recommend and inform ongoing implementation of an evolving definition of basic education. Members include eight legislators and representatives of the Governor's Office, the State Board

---

<sup>47</sup> *Seattle School District II, supra* note 36, Findings and Conclusions at 69.



of Education (SBE), the Superintendent of Public Instruction (SPI), the Professional Educator Standards Board (PESB), and the Department of Early Learning (DEL).

The QEC develops strategic recommendations on the Program of Basic Education, taking into consideration the capacity of the education system and the progress of implementing data systems. Recommendations are intended to inform educational policy and funding decisions, identify measurable goals and priorities for a ten-year time period, and enable continuing implementation of an evolving program. ESHB 2261 required the QEC to report to the Legislature by January 1, 2010, including recommendations for resolving issues or decisions requiring legislative action during the 2010 legislative session. The QEC's first report also must include:

- a recommended schedule for concurrent phase-in of any changes in the Basic Education Program and funding with full implementation to be completed by September 1, 2018;
- a recommended schedule for phasing-in implementation of the new pupil transportation funding formula beginning in 2013;
- consideration of a statewide mentoring program; and
- recommendations for a Program of Early Learning for at-risk children.

*Other working groups.* In addition, ESHB 2261 established working groups to make recommendations to the Legislature, including recommendations on: a salary allocation model that aligns educator certification with the compensation system; new funding formulas and implementation schedules for concurrent phase-in of increased program requirements and increased funding; and options for a new system of local finance through levies and local effort assistance.

### **Substitute House Bill 2776 (2010).**

By providing formulas and specificity, SHB 2776 began implementation of the reforms required by ESHB 2261.

As directed by ESHB 2261 the Funding Formula Technical Working Group (FFTWG) developed a recommended set of numeric values for the prototypical school funding formula that are intended to represent, as closely as possible, a translation of current levels of state funding for Basic Education into the new formula elements. Its final report calls these the Baseline values. The report also recommends various adjustments to the structure of the formula that appears in statute.

The QEC recommended that the 2010 Legislature adopt the Baseline values and details of the prototypical school funding formula as recommended by the FFTWG and place these values into statute, to take effect September 1, 2011.

In SHB 2776, the Legislature declared its purpose of adopting the technical details of a new distribution formula for basic education and authorizing a phase-in of implementation of a new distribution formula for pupil transportation. The Legislature also declared its intent to establish

a "hold-harmless"--that per-pupil Basic Education funding for a school district not be decreased as a result of the transition to the new formulas.

SHB 2776 filled in many of the details of the basic education reforms required by ESHB 2261. First, SHB 2776 made the first step in implementing the prototypical school formula by establishing the details of the new formula in statute at current budget levels. In other words, the bill translated current funding levels into a baseline prototypical school formula.

Second, SHB 2776 established implementation dates for the improvements to the new funding formula.

- K-3 class size reduced to 17 student full-time equivalents (FTE) by the 2017-18 school year with implementation to start with highest poverty schools
- Maintenance, Supplies, and Operating Costs (MSOC) increased to a total of \$1,082.76 per full-time equivalent student by the 2015-16 school year, plus adjustments for inflation
- New student transportation formula implemented in the 2011-13 biennium with full implementation in the 2013-15 biennium
- Full-day kindergarten to be fully implemented by the 2017-18 school year, beginning with highest poverty schools

#### ***Prototypical School Funding Formula.***

SHB 2776 specified the following numeric values for average class size, which forms the basis of allocations for classroom teachers in the funding formula:

• Grades K-3	25.23
• Grade 4	27.00
• Grades 5-6	27.00
• Grades 7-8	28.53
• Grades 9-12	28.74
• Middle and high school CTE	26.57
• Skill center programs	22.76

SHB 2776 directed that the state appropriations act must specify class sizes for high poverty schools, laboratory science, Advanced Placement, and International Baccalaureate.

The following allocations of building-level staff for each level of prototypical school are specified:

	<u>Elementary</u>	<u>Middle</u>	<u>High</u>
• principals and building administration	1.253	1.353	1.880
• teacher librarians	0.663	0.519	0.523
• guidance counselors	0.493	1.116	1.909
• teaching assistance	0.936	0.700	0.652
• office support and non-instructional aides	2.012	2.325	3.269
• custodians	1.657	1.942	2.965
• student and staff safety	0.079	0.092	0.141
• parent involvement coordinators	0.000	0.000	0.000

The allocations for health and social services staff are subdivided into three new categories:

	<u>Elementary</u>	<u>Middle</u>	<u>High</u>
• school nurses	0.076	0.060	0.096
• social workers	0.042	0.006	0.015
• psychologists	0.017	0.002	0.007

A new category of administrative staff allocations is created, called district-wide support, to be allocated per 1,000 FTE students in the school district:

- technology support: 0.628
- facilities, maintenance, and grounds: 1.813
- warehouse, laborers, and mechanics: 0.332

Staffing unit allocations for central office administration are calculated as 5.3 percent of the staffing unit allocations for classroom teachers, building-level staff, and district-wide support.

Minimum allocations of additional resources to support the LAP, TBIP, and Highly Capable Programs provide, as a statewide average, the following instructional hours per week per student in a class size of 15:



- LAP: 1.5156 hours
- TBIP: 4.778 hours
- Highly Capable: 2.159 hours

The minimum allocations for the MSOC per FTE student are specified as the following 2008-09 values, which must be adjusted annually for inflation:

- technology: \$ 54.43
- utilities and insurance: \$147.90
- curriculum and textbooks: \$ 58.44
- other supplies and library materials: \$124.07
- professional development: \$ 9.04
- facilities maintenance: \$ 73.27
- central administration and security: \$ 50.76

Total: \$517.90

***Enhancements to the program of basic education.***

The average class size for grades K-3 must be reduced beginning in the 2011-13 biennium and beginning with schools with the highest percent of low-income students, until the class size in the formula beginning in the 2017-18 school year is 17.0 students per classroom teacher.

Beginning in the 2011-13 biennium, funding must continue to be phased-in incrementally each year for full-day kindergarten until full statewide implementation is achieved in the 2017-18 school year.

Beginning in the 2011-13 biennium, the allocations for the MSOC must be annually increased after being adjusted for inflation until the following 2007-08 values are provided beginning in the 2015-16 school year:

- technology: \$113.80
- utilities and insurance: \$309.21
- curriculum and textbooks: \$122.17
- other supplies and library materials: \$259.39
- professional development: \$ 18.89
- facilities maintenance: \$153.18
- central administration and security: \$106.12

Total: \$1,082.76

***Pupil Transportation Funding Formula.***

ESHB 2261 authorized a new funding formula that uses a regression analysis of various cost factors to allocate funds to school districts. The laws authorizing the new formula take effect

September 1, 2013, but implementation of the formula is to be phased-in according to an implementation schedule adopted by the Legislature.

The QEC recommended that the new formula be authorized beginning September 1, 2011, rather than 2013, and further recommended that funding for the new formula be phased-in over a three-year period beginning in 2011.

SHB 2776 changed the implementation date of the new pupil transportation funding formula. These changes took effect September 1, 2011, instead of September 1, 2013. The phase-in of the implementation of the new formula must begin no later than the 2011-13 biennium and be fully implemented by the 2013-15 biennium.

### ***Funding Working Groups.***

SHB 2776 directed the Local Finance Working Group to provide its report in 2011. SHB 2276 also directed this group to examine district capacity and facility needs associated with phasing in class size reduction and full-day kindergarten, as well as analyze the potential use of local funds that are made available from proposed increases in funding for transportation and the MSOC.

SHB 2776 also directed the Compensation Working Group to provide a report, which was delivered in July 2012. Lead responsibility for convening the Compensation Working Group is re-assigned to the OSPI, in collaboration with the OFM.

### ***Additional 2010 reforms.***

In addition to the basic education formula changes in SHB 2776, the 2010 legislature enacted further education reform legislation that affected programs outside 2261's basic education definition. E2SSB 6696<sup>48</sup> provides a new authority and process for the Superintendent of Public Instruction (SPI) and the State Board of Education (SBE) to enact an accountability system that recognizes successful schools and requires certain actions by school districts in which, according to federal definitions, at least one school falls among the lowest five percent of persistently low-achieving schools. E2SSB 6696 also created a new classroom teacher and principal four-level rating evaluation system with specified minimum criteria.

To examine accountability models in other states and identify options for a complete system of education accountability, E2SSB 6696 also created a Joint Select Committee on Education Accountability. The Committee consists of eight legislators and began convening in the summer of 2012, with reports due to the Legislature and the Governor by September 1, 2012 and 2013.

---

<sup>48</sup> Chapter 235, Laws of 2010, Engrossed Second Substitute Senate Bill 6696.

## **Operating Budget Revenues and Expenditures, 2009-2013**

Having enacted these reforms to the program of basic education, the Legislature is focusing on effective implementation strategies. These strategies must consider, among other things, educational needs such as system capacity, education policy-based changes to the school funding formulas, and identification of a permanent and reliable funding source for the enhancements. To provide additional context for the discussion, it is useful to note the substantial budget challenges faced by the state during this time. This portion of the report provides an overview of the state operating budget and a summary of how the Legislature dealt with recurring budget shortfalls since 2009. The next portion provides an overview of recent steps in K-12 public school funding.

### **Operating Budget Background.**

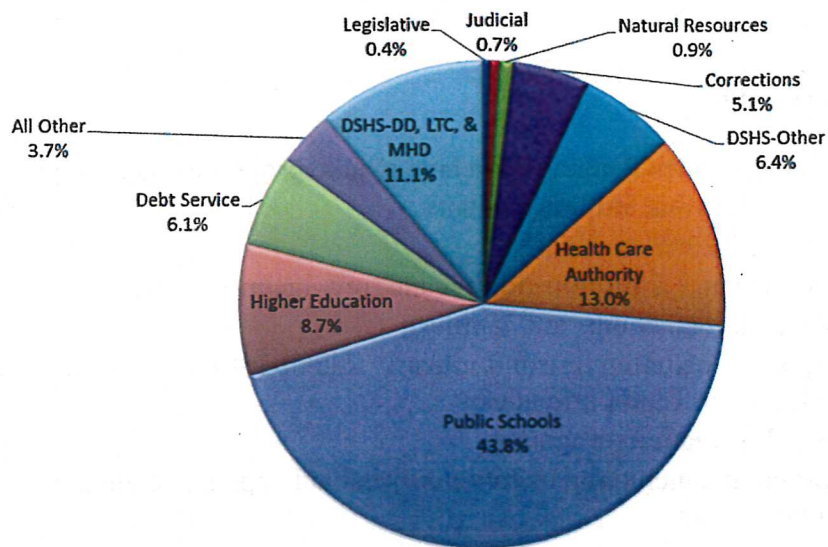
The state's operating budget provides funding for a host of state programs, including:

- K-12 education for nearly one million students;
- Higher education for 232,000 students;
- Health care for more than 1.2 million children and low-income adults;
- Social services for children, adults, and families;
- Public safety programs, including prison for nearly 18,000 inmates and community supervision for more than 15,000 offenders;
- Natural resource and recreation programs;
- Judicial branch programs, including operation of trial and appellate courts, public defense, and civil legal aid;
- Other government operations; and
- Debt service on bonds issued to fund capital construction projects, including projects for K-12 and higher education.



The following chart illustrates spending by budget area for the 2011-13 fiscal biennium:

## Where is the Money Spent?



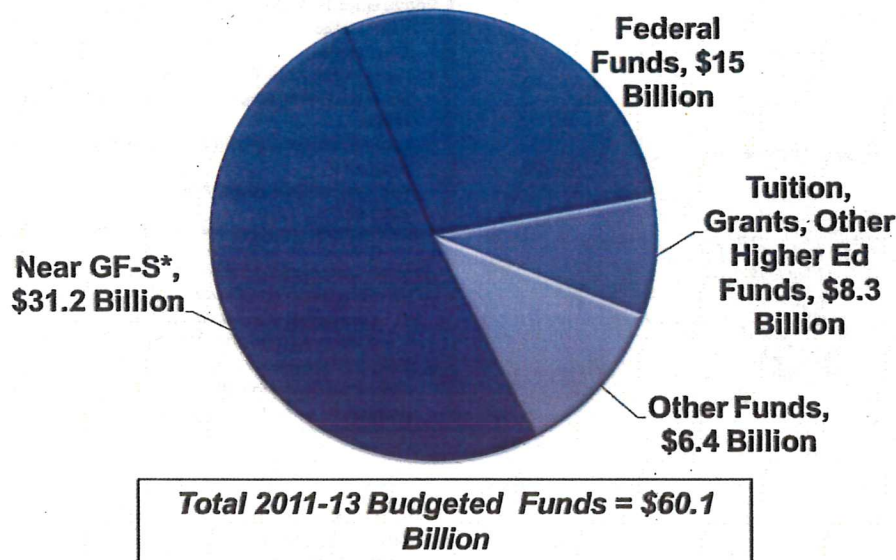
### 2011-13 Operating Budget As Passed Legislature

Near General Fund-State + Opp. Pathways

Revenues from the state general fund are the largest source of support for operating budget expenditures. The operating budget also appropriates funds from other sources, such as federal funds and dedicated state accounts.

## Where Does the Money Come From?

While the Legislature spends the majority of its time on the “near general fund,” the operating budget includes over \$29 billion in other funds and accounts.



\* Plus Opportunity Pathways

Note: Totals do not tie due to rounding

### Mandatory and Discretionary Spending.

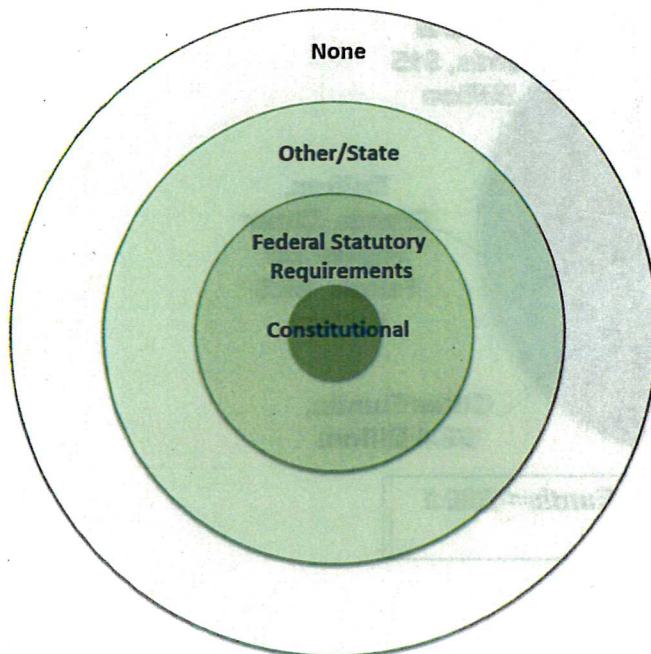
In many areas of the budget, the Legislature has relatively little discretion in determining appropriation levels; in other areas, the Legislature has complete discretion. State constitutional obligations affect expenditure levels in many budget areas. For instance, appropriations to fund basic education constitute about 41% of the state operating budget<sup>49</sup>, and debt service on previously issued bonds is about 6% of the budget (bonds generally receive protection as contracts under Article I, sec. 23). Other areas of the budget that receive some constitutional protection are actuarial funding for pensions and collective bargaining agreements (impairment of contracts), funding to meet constitutional standards of care or treatment for persons in the custody of the state (corrections institutions, state hospitals, foster children, residential habilitation centers, etc.), and some minimum level of funding for the three branches of government to meet their constitutional duties. Federal law mandates a minimum level of state funding if the state participates in certain federal programs such as Temporary Assistance to Needy Families. A state is also required to provide mandatory services to mandatory

<sup>49</sup> NGF-S + Opp. Pathways.



populations if it participates in the Medicaid program (all states, including Washington, participate in Medicaid.) There are statutory state entitlement programs that the state must fund unless the Legislature changes the state law. In other areas of the budget, the state has complete discretion over spending and may change the funding level solely in the budget. When state constitutional obligations are added to expenditures required as a condition of federal participation, the percent of the budget that is mandatory is significantly above half.

### Some spending is mandatory and some is discretionary



#### Requirements With Constitutional Elements

- K-12 Basic Ed
- Debt Service
- Some Pension Contribution Obligations
- Some Level of Funding for Judicial, Legislative & Executive Offices
- Some level of care in institutional and foster care programs\*
- Approved collective bargaining agreements & other contracts\*\*

#### Federal Statutory Requirements

- Since the state participates in Medicaid:
  - Core populations & core services
  - Other requirements (i.e. rate issues)
- TANF/Maintenance of Effort (MOE)
- Cost obligations if state participates in certain federal programs (i.e., admin costs for food stamps)

#### State Statutory and Other Requirements

- State-created statutory entitlements (kids' health, Disability Lifeline, etc.)\*\*\*
- Funding that, if reduced, may increase entitlement costs
- Funding to avoid state liability in areas of responsibility
- Other Statutory Programs

#### Discretionary

- Programs without a statutory or case law requirement

Concentric circles are illustrative only and not to scale.

\* Includes prisons, JRA facilities, state hospitals, DD facilities, foster care, SCC, etc.

\*\* Contracts may be renegotiated. Also, some contracts have termination – and/or fiscal shortfall clauses that may be invoked.

\*\*\* Can be changed via legislation.

### State's Recent Revenue and Expenditure Experience.<sup>50</sup>

With a robust economy in the 2005-07 biennium providing increased revenues, the Legislature increased appropriations during that biennium and in the original 2007-09 budget. However, shortly after the Legislature enacted the 2008 supplemental budget in the spring of 2008, the economy began to show real signs of weakness.

Beginning with the 2009 supplemental budget through the 2009-11 and 2011-13 biennial operating budgets, and the numerous supplemental budgets, the Legislature had to address significant budget shortfalls as revenue forecasts continued to decline and caseload forecasts generally increased during the recession and very slow recovery. Between 2009 and 2012, the

<sup>50</sup> For additional detail, please see the Legislative Budget Notes for the appropriate fiscal period, available at [leap.leg.wa.gov](http://leap.leg.wa.gov).

Legislature met in four regular sessions and seven special sessions to balance the state's operating budget. In general, the Legislature balanced the budgets over this period through, in order of magnitude, expenditure reductions, temporary federal revenue, fund transfers, and (mostly temporary) revenue increases.

In 2009, the Legislature faced a combined budget problem of approximately \$9 billion. First, the Legislature needed to balance the previously enacted 2007-09 budget, which faced a budget problem of approximately \$1.7 billion. Then, the Legislature needed to write a balanced budget for the 2009-11 biennium. The 2009-11 biennium faced a \$7.4 billion shortfall, defined as the amount by which the cost of maintenance level plus policy additions of \$300 million, plus a \$500 million reserve, exceeding projected revenues by \$6.6 billion.

After the 2009-11 budget was written in the spring of 2009, the revenue forecast for that biennium declined by a total of \$1.8 billion. The 2010 Legislature addressed a new budget problem of \$2.8 billion that included the revenue forecast reduction, increased maintenance level (caseload and per capita) costs of \$660 million, and policy additions (including costs generated by litigation) of \$369 million.

After the 2010 Legislative session, forecasted revenues for the 2009-11 biennium further declined by a total of \$1.4 billion in June and November 2010, resulting in another new budget shortfall. The Legislature met on December 1, 2010 and solved about half the shortfall. The remainder was solved in the 2011 supplemental operating budget.

Very generally speaking, the Legislature addressed a 3-year budget problem (fiscal years 2009, 2010, and 2011) of lower revenue, maintenance level increases, and some policy additions through budget reductions (almost half the solution), additional federal funds, mostly American Reinvestment and Recovery Act funds that temporarily replaced/supplanted state funds (about one-quarter of the solution), fund transfers and use of reserves (about 20 percent of the solution), and increased revenue from additional taxes, budget driven revenue, and other revenue-related items (between 5 and 10% of the solution).

As the Legislature began to craft the budget for the 2011-13 biennium, the estimated cost of continuing the current and statutorily required programs into 2011-13 biennium was about \$3.7 billion more than projected revenues. The 2011-13 biennial budget problem increased further when \$424 million in additional policy costs were included, such as repaying the delayed June 2011 apportionment payment, beginning the new education funding formula, increasing the state need grant to keep pace with assumed increases in tuition, and leaving projected reserves of \$741 million (\$282 million of which was in the Budget Stabilization Account). The budget problem statement for 2011-13 biennium of about \$5 billion was addressed through policy level reductions of approximately \$4.5 billion and through fund transfers and resource changes.

After the 2011-13 budget was enacted in May 2011 (with \$741 million in projected reserves),<sup>51</sup> projected revenues for that biennium declined by another \$2.2 billion. As of the November 2011

---

<sup>51</sup> Total of Near General Fund-State, Opportunity Pathways, and Budget Stabilization Account. Please see 2012 Legislative Budget Notes, attached as Appendix A.



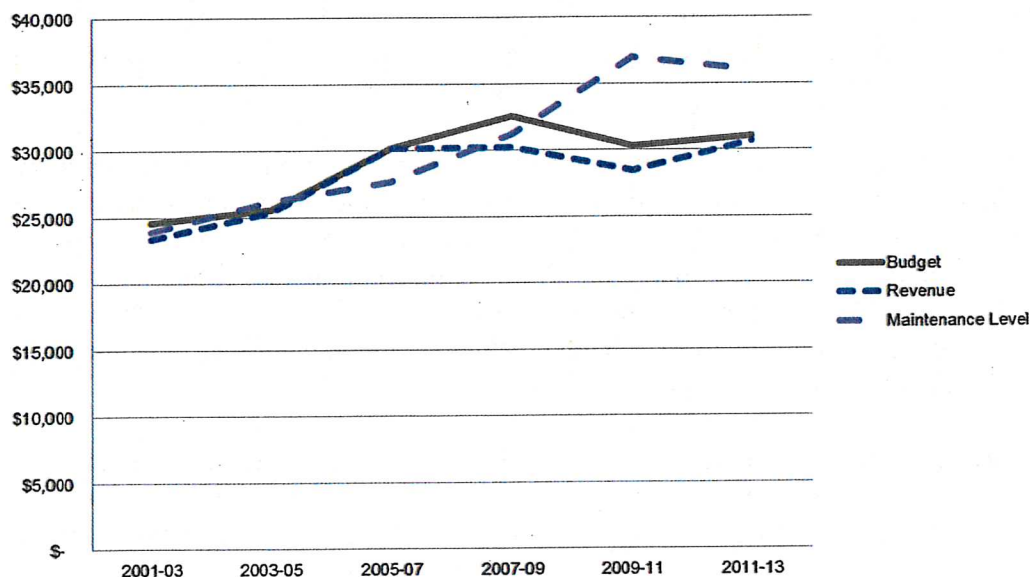
revenue forecast, the \$741 million in ending reserves for the 2011-13 biennium had become a negative \$1.4 billion.

In a total of four legislative sessions from November 2011 through April 2012, the Legislature took actions that cumulatively improved the budget situation by approximately \$1.7 billion, leaving projected reserves of \$311 million.<sup>52</sup> Legislative actions taken included reducing Near General Fund-State appropriations by approximately \$1 billion.<sup>53</sup> Revenue related legislation is projected to increase Near General Fund-State resources by a net of \$228 million.<sup>54</sup> Finally, Near General Fund-State resources were also increased by a net of \$372 million as a result of fund transfers and an adjustment to working capital reserve.

The following chart helps illustrate the budget challenges faced by the Legislature over the past two biennia. Beginning maintenance level costs exceeded revenue by significant amounts in both biennia.

## Revenue and Budget History

### Near General Fund-State (\$ in millions)



2011-13 budget is after 3ESHB 2127, adopted in the 2012 2<sup>nd</sup> Special Session. Other biennia are budgeted amounts including any supplemental budgets. 2011-13 revenue is based on the June 2013 forecast.

\*Maintenance level is the cost to continue existing services, including adjustments for mandatory caseloads. Shown above is the maintenance level used to develop the original biennial budget.

<sup>52</sup> \$265 million in the Budget Stabilization Account and \$46 million in Near General Fund-State. Please see 2012 Legislative Budget notes, attached as Appendix A.

<sup>53</sup> \$436 million in maintenance net level savings, \$514 million in net policy level savings, and directing that \$120 million of anticipated reversions remain in the general fund.

<sup>54</sup> \$144 million from redirecting existing revenues into the state general fund, \$51 million from changes in the administration of unclaimed property, and \$33 million from a variety of other actions.

## **State Basic Education Expenditures**

During this period of declining revenue and economic malaise, the Legislature protected K-12 funding to the extent possible. Overall, K-12 experienced funding cuts totaling about half what they would have been if cuts had been applied proportionately across subject areas, including a one-time shift in apportionment payments that effectively did not cause a reduction in school budgets.

### **2011 session--2011-13 biennial budget.**

In the 2011-13 operating budget, the Legislature implemented ESHB 2261 and SHB 2776 by allocating K-12 basic education funding under the new prototypical school formula. The Legislature took the initial steps to implementing the enhanced formula established by the reform bills by:

- Increasing funding for Full-Day Kindergarten. \$5 million to increase from 20% to 21% of eligible K students in 2011-2012 & 22% in 2012-13.
- Increasing funding to reduce K-3 class sizes. The Legislature eliminated a pre-existing non-basic education enhancement for K-4 class size, and instead provided \$33.6 million to lower K-3 class sizes in high-poverty schools as the first stage of SHB 2776 implementation. (The resulting average class size funded by the state through the prototypical model decreased from 25.23 to 24.00 for those schools falling within the high-poverty threshold.)
- Increasing funding for student transportation. The Legislature appropriated an increase of \$5 million to begin implementation of the new state funding formula, as well as \$12 million for caseload and inflation.
- Increasing MSOC funding by a net \$7 million. The Legislature appropriated \$31 million for inflation under SHB 2776, but adjusted MSOC funding for a reduction associated with the elimination of the non-basic education K-4 enhancement.
- Holding school districts harmless for formula changes. As a result of the transition to the new prototypical funding formula, some school districts gained funding and some lost. The school districts that gained funding were allowed to gain but \$25 million was provided to bring the losing school districts to a net zero impact.

The 2011 Legislature also provided enhancements for programs outside basic education, including drop-out prevention, enhanced learning opportunities in technology, and teacher and principal evaluations.

Other, non-basic education enhancements included:

- \$4.0 million for an IT Academy;
- \$3.0 million for the Pay for Actual Student Success (PASS) drop-out prevention program;
- \$3.0 million to implement the teacher and principal evaluations bill; and
- \$2.6 million for several smaller additions, primarily newly-enacted bills.



The 2011 Legislature also reduced funding for K-12 programs outside the program of basic education.

*Non-basic education policy reductions, total \$1.2 billion (dollars in thousands)*

Suspend Initiative 728 per-pupil distributions	(860,716)
Eliminate non-basic education K-4 class size reduction <sup>55</sup>	(169,600)
Reduce Alternative Learning Experience (ALE) programs by 15%, on average	(41,055)
Eliminate non-basic education MSOC	(24,194)
Savings and reductions in statewide student assessment costs	(43,728)
Prior school year adjustment	(20,945)
Full-day kindergarten adjustment	(8,359)
Limit Running Start to 1.2 full-time equivalents per student	(6,004)
Reduce food-service funding	(6,000)
Reduce or eliminate a number of statewide grants and programs, each <\$5 million	(43,366)

*Compensation-related policy reductions, total \$0.8 billion*

Suspend uniform COLA for Plan 1 retirees of state agencies and K-12 public schools	(275,338)
Suspend education employees' Initiative 732 COLA	(265,717)
K-12 salary reduction (1.9% certificated & classified staff; 3.0% administrative staff)	(179,044)
Reduce first-year recipients' National Board Bonus 40% to pro-rate to portion of year that bonus is in effect	(61,134)

- In addition, the budget shifted \$128.0 million in K-12 apportionment payments to school districts by one day. By delaying apportionment payments from June 30, 2011 to July 1, 2011, the budget moved the expenditure from the 2009-11 biennium to the 2011-13 biennium.
- Adjusting to disregard the impacts of the shift and the associated \$13.0 million emergency contingency fund, the originally-enacted 2011-13 budget totaled \$13.7 billion – up marginally from the final adjusted 2009-11 K-12 budget of \$13.6 billion.

<sup>55</sup> Before the 2011-13 fiscal biennium, the Legislature had historically provided enhanced general apportionment funding to reduce class sizes in grades K-4. *E.g.*, Laws of 2009, Chapter 564, section 502(2)(a)(ii). This enhancement was outside the then-existing statutory funding formula for basic education in former RCW 28A.150.260, and it was separate from allocations under Initiative 728, which could be used for class size reduction as well as other services. Because the K-4 enhancement was outside the statutory formula, the decision to fund it was made biennially in the budget bill. Beginning with the 2011-13 fiscal biennium, ESHB 2261 defined funding for K-3 class size reduction as part of the statutory basic education definition, starting with incremental implementation in high-poverty districts. The 2011-13 budget eliminated the former extra-statutory K-4 enhancement and began implementation of the new K-3 formula established by ESHB 2261 and SHB 2776.

## **2011 early action K-12 budget reductions--December 2011.**

The Governor called a special session of the Legislature to meet in November 2011 to address the deficit that arose from the reduction to the September 2011 revenue forecast. Due to the difficulty of the fiscal situation, the supplemental budget submitted by the Governor proposed reducing the school year from 180 to 176 days.

The early-action supplemental budget enacted in December of 2011 made policy-level budget changes to programs other than the program of basic education. These reductions include:

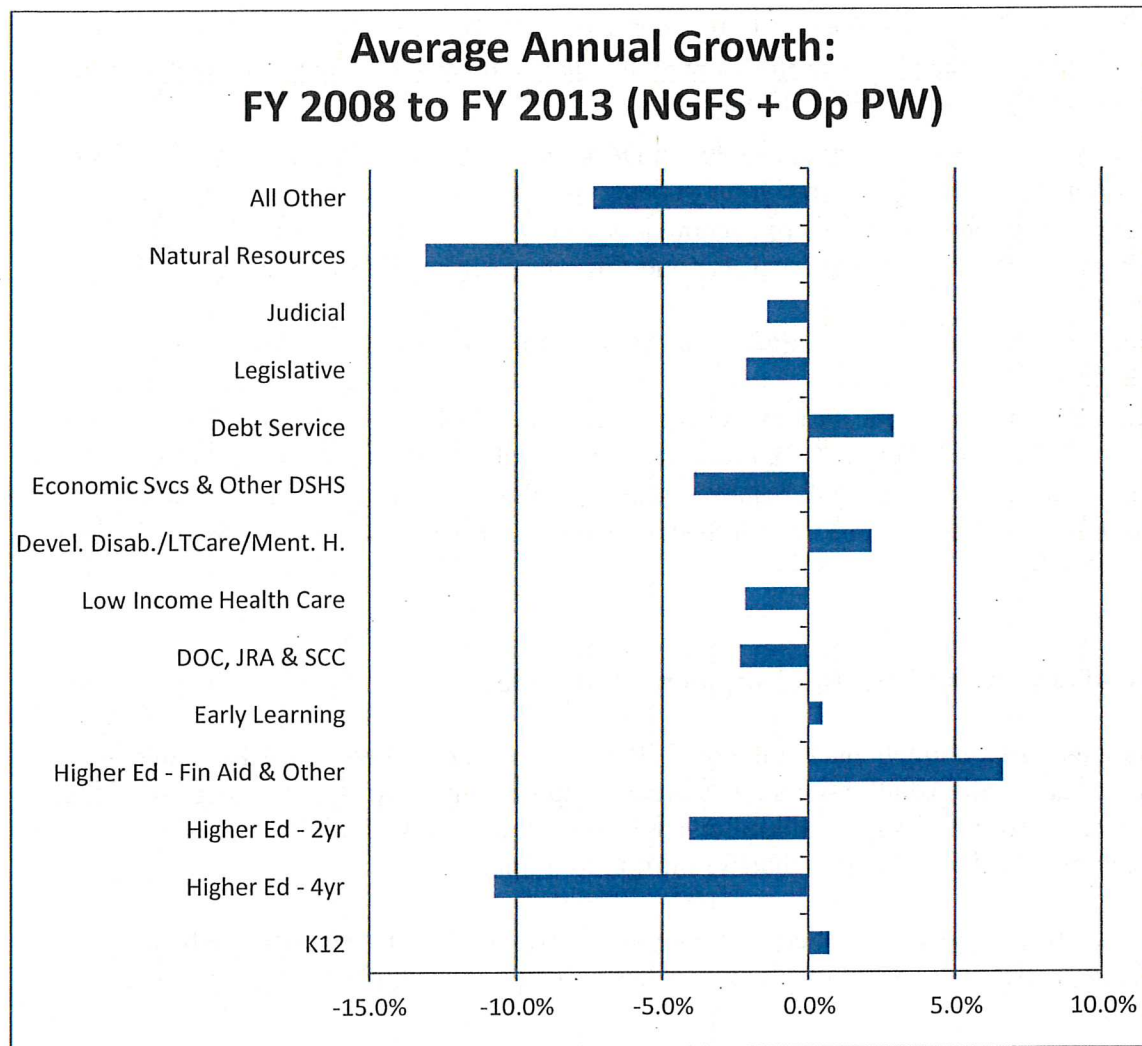
- Changing the schedule of bus replacement payments to the end of each school year from the beginning of each school year, for one-time state savings of \$49.0 million in the biennial budget.
- Using \$3.1 million of federal Education Jobs funding to replace state funding for general apportionment.
- Adding one month to the student enrollment counts, which increases the average annual count for some populations (e.g. bilingual and special education) but decreases the average annual figure overall, resulting in \$1.3 million in reduced K-12 expenditures.
- Reducing the Office of the Superintendent of Public Instruction's administrative budget by \$600,000.

## **2012 Legislative session--2012 K-12 supplemental budget.**

The 2012 supplemental budget enacted in April 2012 took no further cuts to the K-12 budget, despite further cuts to almost all other subject areas. Supplemental appropriations included \$6.0 million for a variety of relatively small policy additions, for a variety of additions, primarily newly-enacted bills each costing less than \$3 million to implement.

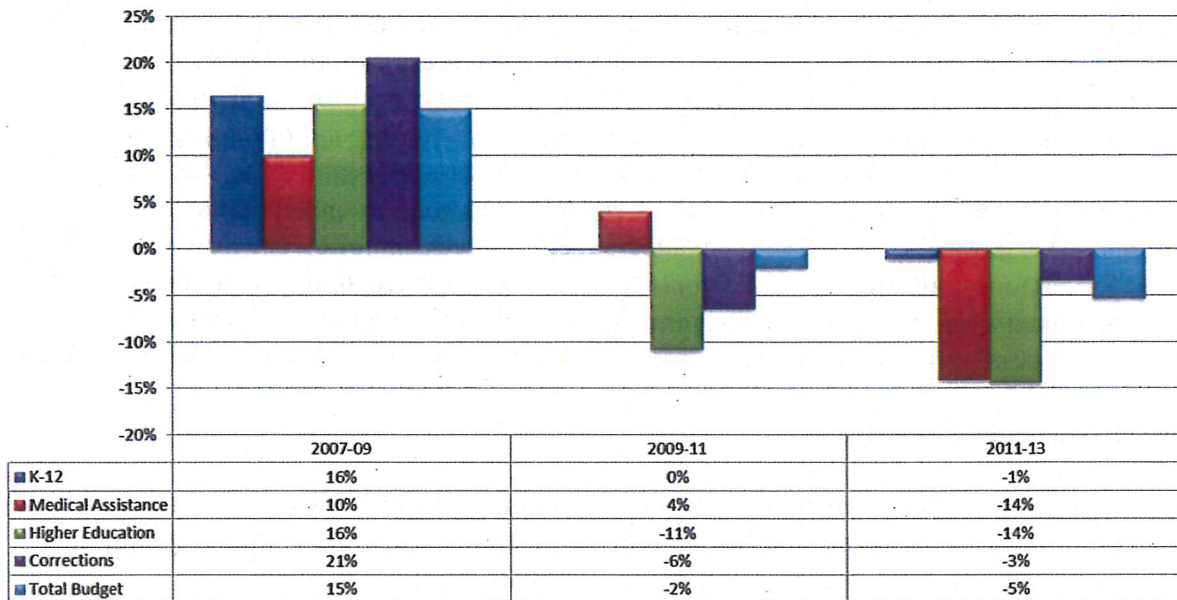
In addition, the 2012 Legislature enacted Chapter 35, Laws of 2012 (ESSB 5895), which established a principal and teacher evaluation system. The Legislature provided \$5.8 million to fund the system.

The graphs below portray the recent K-12 budget experience in comparison to other budget areas:





## Changes in Selected Areas Over the Last Three Biennia (Near General Fund-State + Opp Pathways + Federal ARRA)\*



\*Expenditures are operating only from NGFS and the Opportunity Pathways Account and exclude Capital expenditures. FY 2012-2013 represent current appropriations (or budgets). Previous fiscal years reflect actual spending as reflected in LEAP historical data with some adjustments. Data was also adjusted to enhance comparability over time. Adjustments made include: a) removing large one-time appropriations into other accounts (FY 2006 and FY 2007); b) reversing a one-time shift in apportionment payments (FY 2011 and FY 2012); c) reversing one-time federal education jobs funding (FY 2011 and FY 2012); and d) reversing ARRA funding (FMAP and fiscal stabilization grants) that directly offset state spending (FY 2009-FY 2011).



## **Ongoing Legislative Studies and Activities**

As part of its ongoing duty to review and revise the state's program of basic education, the Legislature is undertaking additional studies in preparation for the 2013 legislative session. As the Legislature writes the 2013-15 operating budget, it will be very much aware of this Court's mandate for "real and measurable progress" toward full implementation of ESHB 2261 and the Article IX obligation. The process of legislative study is lengthy and time-consuming, but, as this Court noted in *McCleary*, these "uniquely constituted fact-finding and opinion-gathering processes"<sup>56</sup> will provide the best forum for the complex process of establishing the details of an education system. Standing committees of the Legislature, as well as special legislative committees and task forces, are actively engaged in K-12 education policy development. These processes for gathering information and opinions will provide the legislature with the necessary policy background to enact the laws and appropriations that will demonstrate "real and measurable progress" in implementing the Article IX duty defined by the reforms of ESHB 2261.

### **Legislative Standing Committees**

To implement the Legislature's duty to review and revise the program of basic education, several standing committees of the House and Senate are assigned the tasks of developing policies and legislation relating to K-12 programs and funding. These committees include:

- Senate Early Learning & K-12 Education Committee
- Senate Ways & Means Committee
- House Education Committee
- House Education Appropriations and Oversight Committee
- House Ways & Means Committee

The policy review and oversight exercised by these committees is part of the Legislature's ongoing, day-to-day business. The testimony elicited during the committee hearing process and the expertise developed by committee members are essential to legislative opinion-gathering and policy-setting.

In addition, in their roles both as policy-makers and community ombudsmen, legislators continuously gather constituent and stakeholder information and opinions regarding public education. Each individual legislator has public schools and schoolchildren in his or her district, so every legislator has a role in policy-setting on this topic.

### **Joint Task Force on Education Funding**

#### ***Directive to Task Force.***

HB 2824<sup>57</sup> established a Joint Task Force on Education Funding (Task Force). The duties of the Task Force directly address the objective and scope of this Court's oversight: the purpose of the

---

<sup>56</sup> *McCleary*, 173 Wn.2d at 517 (quoting *Seattle School District No. 1*, 90 Wn.2d at 551 (Utter, J., concurring)).

<sup>57</sup> Chapter 10, Laws of 2012 1st sp. sess.

Task Force is to develop and recommend a permanent and reliable funding mechanism for implementing the basic education reforms of ESHB 2261 and SHB 2776 by 2018.

The Task Force's final report is due to the Legislature by December 31, 2012. This report must contain a proposal for a reliable and dependable funding mechanism to support basic education. At a minimum, the proposed funding mechanism must support full implementation of the specific programmatic enhancements required by ESHB 2261 and SHB 2776: Full-day kindergarten, reduced K-3 class size, increased MSOC allocations, and a new pupil transportation formula. If the Task Force recommends multiple options, it must indicate one preferred alternative, including an outline of implementing legislation. If the Task Force recommends an option to fully fund the basic education program with no new revenues, it must identify the areas of state expenditures to be reduced or eliminated.

In addition, the Task Force must also consider the QEC's recommendations for the Transitional Bilingual Instruction Program, with recommendations regarding a scaled funding formula based on levels of English language proficiency, a supplemental formula based on students exiting the program due to demonstrated English language proficiency, and implementing legislation.

### ***Task Force Membership.***

#### Senators

Hon. Lisa Brown, 3rd Legislative District

Hon. Joe Fain, 47th Legislative District

Hon. David Frocht, 46th Legislative District

Hon. Steve Litzow, 41st Legislative District

#### Representatives

Hon. Gary Alexander, 20th Legislative District

Hon. Susan Fagan, 9th Legislative District

Hon. Marcie Maxwell, 41st Legislative District

Hon. Pat Sullivan, 47th Legislative District

#### Gubernatorial Appointees

Susan Enfield, Highline School District, Vice-Chair

Mary Lindquist, Washington Education Association

Jeff Vincent, State Board of Education, Chair

### ***Task Force Activities.***

At its meeting of August 3, 2012, the Task Force appointed Jeff Vincent as chairman. At its meetings of August 3 and August 28, the Task Force laid the groundwork for its statutory task by reviewing the requirements of ESHB 2261 and SHB 2776, and studying the state's revenue and budget obligations. The Task Force expects to meet every three weeks through the end of 2012 in order to finish its duties on time.

Documents from Task Force meetings are available on the web at:  
<http://www.leg.wa.gov/jointcommittees/EFTF/Pages/default.aspx>

### **Quality Education Council.**

As described above, the Quality Education Council (QEC) was established by ESHB 2261 in order to inform and make recommendations on the evolving program of basic education.

### ***Compensation Working Group.***

The QEC received recommendations from its Compensation Technical Working Group. The Working Group, comprising representatives of school districts, employee organizations, and technical experts, provided its report to the QEC on June 30, 2012. The Working Group made a number of specific recommendations for the QEC to consider in making recommendations to the Legislature, and for the Legislature in turn to consider as it reviews and revises the methods through which it implements the Article IX duty.

### ***Ongoing QEC Activities.***

The QEC met on August 13, 2012, and expects to hold three additional meetings before the 2013 legislative session.

Documents from QEC meetings are available on the web at:  
<http://www.k12.wa.us/QEC/default.aspx>

### **Other Legislative Studies.**

E2SSB 6696<sup>58</sup> created a Joint Select Committee on Education Accountability to examine accountability models in other states and identify options for a complete system of education accountability. It is composed of eight legislators and held its first meeting on August 20, 2012, with reports due to the Legislature and the Governor by September 1, 2012 and 2013.

Documents from the Joint Select Committee meetings are available on the web at  
<http://www.leg.wa.gov/jointcommittees/EAJSC/Pages/default.aspx>

---

<sup>58</sup> Chapter 235, Laws of 2010.



## **Conclusion**

As this Court explained in the *McCleary* ruling, the wheels are beginning to turn under the Legislature's enacted reforms to basic education. Although progress toward implementation of the ESHB 2261 reforms in the 2011-13 biennium was slow, it was not non-existent, and the incremental funding of these reforms represented a good-faith legislative effort to progress toward these goals in the second consecutive biennium of substantial budget cuts. After this Court issued the *McCleary* ruling just before the start of the legislative session at which the Legislature had to resolve a substantial deficit, the Legislature preserved K-12 education from further cuts as it balanced the budget for the remainder of the biennium.

When the Legislature enacted the "promising reforms" of ESHB 2261, it determined that for both practical and educational reasons, major changes to the program of basic education and the funding formulas that support it simply could not occur instantaneously. In ESHB 2261 and SHB 2776, the Legislature assigned itself the challenging duty of implementing those improvements by 2018. This Court's *McCleary* ruling confirmed that these legislative reforms are necessary in order to satisfy the Article IX duty that is imposed on the state as a whole.

The complex process of legislative policy-making likewise takes time. HB 2824 assigned the Joint Task Force on Education Funding the duty of making recommendations on a permanent and reliable fund source for implementing ESHB 2261. The Task Force will perform the initial duty of gathering information and soliciting opinions and recommendations on implementation of ESHB 2261. A host of additional basic education policy and funding proposals will be presented to the Legislature by teachers, parents, school districts, and citizens. In the process of gathering information and opinions that the Constitution uniquely assigns to the legislative branch, the Legislature will consider the means by which it will address the Court's requirement for "steady progress according to the schedule anticipated by the enactment of the program of reforms in ESHB 2261 and SHB 2776. Then, in the law-making process that is likewise uniquely assigned to the legislative branch, the Legislature will enact legislation and appropriations to satisfy Article IX by demonstrating real and measurable progress toward these reforms.

## **Appendix A**

Legislative Budget Notes, 2011-13 Biennium--2012 Supplemental

Also available at: <http://leap.leg.wa.gov/leap/budget/lbns/2012toc.htm>